

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed October 17, 2007 ("Office Action"). Claims 1-31 are pending in the present application. Claims 1-3, 5-9, 11-21, and 23-31 currently stand rejected. Claims 1-4, 6, 10, 11, 16, 18, 22-24, 29, and 31 are objected to.

Allowable Claims

Applicant notes with appreciation the indication that Claims 4, 10, 22 would be allowable if rewritten in independent format.

Claim Objections

The PTO identified numerous claim objections along with suggested amendments. Applicant has adopted all of the PTO's suggestions and, accordingly, request removal of these rejections.

Section 112 Rejections

Claims 5, 15, 17, 27, and 29 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention.

Applicant has amended Claim 5, 17, and 29 in a manner believed to address the PTO's concerns. Accordingly, Applicant respectfully requests removal of these rejections.

With reference to Claims 15 and 27, Applicant respectfully submits that it is improper to interpret steps occurring in a certain order unless the language of the method claims impose such a requirement. *See e.g., M.P.E.P. 2111.01.* Specifically, in making this rejection, the PTO is impermissibly requiring every portion of one step to occur prior to the occurrence of the next step. For the portion of the method claims cited by the PTO, no such requirement exists. Additionally, given Claims 15 and 27 and their dependents, Applicant submits that one of ordinary skill in the art would understand what is claimed when read in light of the specification. Accordingly, Applicant respectfully requests removal of this rejection.

Section 102 Rejections

Claims 6, 12, 18, 23, 24, 30, and 31 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 7,006,452 to Lund ("*Lund*"). Applicant traverses these rejections.

As the PTO is aware, in order for a reference to anticipate a claim "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989) (Emphasis Added). Further, Applicant respectfully reminds the PTO that "the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." 37 C.F.R. §1.104 (Emphasis added). With these threshold requirement in mind, Applicant submits that the PTO has failed to establish a *prima facie* case of anticipation using *Lund*

Independent Claim 6 is allowable because *Lund* fails to disclose, expressly or inherently, "establishing a plurality of digital subscriber line connections with the communications device." (Emphasis added). The Office Action alleges that *Lund* discloses the above feature at Col. 6, ll. 20-27, but this is incorrect. Col. 6, ll. 20-27 describes in entirety the following:

In a different operating mode, the detection is performed in a reverse direction. For instance, the matching mechanism 440 may detect a matching DSL based on the protocol list 140 (initiating protocol list). In this case, the matching mechanism 440 tests each DSL data link layer protocol listed in the list 140 and monitors the response from the CPE 110. A matching is found when an initiated protocol received a correct response from the CPE 110.

Applicant submits that monitoring the response is not establishing a connection. Additionally, assuming for the sake of argument, that a correctly received response is a connection, such a connection would only be a single connection – not a plurality of connections as recited in the claims. For at least this reason, Applicant submits that Independent Claim 1 and its dependents should be allowed. The remaining independent claims and their dependents should be allowed for analogous reasons.

Section 103 Rejections

Claims 1, 2, 7-9, 16, 19-21, and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Lund* in view of Applicant's Admitted Prior Art. Claim 3 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Lund* in view of Applicant's Admitted Prior Art as applied to Claim 1 above, and further in view of U. S. Patent No. 7,035,249 to Christensen, et al. ("*Christensen*"). Claims 11, 13, 14, 25, and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Lund* as applied to Claims 6 and 18 above, and further in view of *Christensen*. Applicant traverses these rejections.

Independent Claim 1 is allowable because as indicated above, *Lund* fails to disclose, expressly or inherently, "establishing a plurality of digital subscriber line connections with the communications device." For at least this reason, Independent Claim 1 and its dependents should be allowed. The remaining rejections are moot because all of the independent claims should be allowed as indicated above.

Notwithstanding the above reasons for allowance, numerous dependent claims are additionally allowable because the applied references fail to disclose the additional features of the dependent claims.

For example, Claim 2 is additionally allowable because the applied references fail to disclose "each parameter correlated with at least one connection setting and identifying a particular party as a manufacturer of the integrated circuit chip." The PTO acknowledges that *Lund* does not disclose this limitation. Rather, the PTO relies on the Applicant's Specification at Page 2, ll. 20-30. This is incorrect. Page 2, ll. 20-30 mentions nothing of a parameter sent from a DSLAM to a device that is correlated with a connection setting. Rather, Page 2, ll. 20-30 discuss a problem where a device identifies itself to a DSLAM incorrectly. For at least this additional reason, Claim 2 should be allowed as should Claims 16 and 28 for analogous reasons.

As another example, Claim 3 is additionally allowable because the applied references fail to disclose "selecting one of the connections having a signal to noise ratio that is within predetermined range." The PTO acknowledges that *Lund* does not disclose this limitation. Rather, the PTO relies on the *Christensen* at Col. 3, ll. 21-22 and Col. 3, ll. 46-54. This is incorrect. These portions of *Christensen* describe monitoring conditions for re-establishment of a connection – not selection from one of a plurality of connections. Specifically,

Christensen provides no selection process. For at least this additional reason, Claim 3 should be allowed as should Claims 16 and 28 for analogous reasons.

As another example, Claim 11 is additionally allowable because the applied references fail to disclose “selecting the connection having the fastest data transfer rate.” The PTO acknowledges that *Lund* does not disclose this limitation. Rather, the PTO relies on the *Christensen* at Col. 3, ll. 21-22 and Col. 3, ll. 46-54. These portions of *Christensen* describe monitoring condition for re-establishment of connection – not selecting the connection having the fastest data rate. Specifically, *Christensen* provides no selection process, let alone a selection process of a connection that is fastest. For at least this additional reason, Claim 11 should be allowed.

As another example, Claim 13 is additionally allowable because the applied references fail to disclose “selecting one of the connections having a data transfer rate that is equal to or greater than a minimum data transfer rate and a signal to noise ratio that is within zero to nine decibels.” The PTO acknowledges that references do not disclose this limitation. Rather, the PTO generally relies on *Christensen*’s monitoring of SNR, citing case law concerning ranges. This case law only applies “in the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art.” See e.g., 2144.05 The PTO has cited no references which disclose the claimed ranges. For at least this additional reason, Claim 13 should be allowed.

Notwithstanding the above, Applicant additionally challenges the PTO’s motivation to combine as conclusory. The question raised under 35 U.S.C. § 103 is whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art at the time of the invention. “To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. All words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03 (citations omitted). In addition, even if all elements of a claim are disclosed in various prior art references, which is certainly not the case here as discussed below, the claimed invention taken as a whole still cannot be said to be obvious without some reason why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention.

The controlling case law, rules, and guidelines repeatedly warn against using an applicant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, "The tendency to resort to 'hindsight' based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." M.P.E.P. § 2142.

The U.S. Supreme Court's recent decision in *KSR Int'l Co. v. Teleflex, Inc.* reiterated the requirement that Examiners provide an explanation as to why the claimed invention would have been obvious. *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007). The analysis regarding an apparent reason to combine the known elements in the fashion claimed in the patent at issue "should be made explicit." *KSR*, 127 S.Ct. at 1740-41. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* at 1741 (internal quotations omitted).

The new examination guidelines issued by the United States Patent and Trademark Office ("PTO") in response to the *KSR* decision further emphasize the importance of an explicit, articulated reason why the claimed invention is obvious. Those guidelines state, in part, that "[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.*, 72 Fed. Reg. 57526, 57528-29 (Oct. 10, 2007) (internal citations omitted). The guidelines further describe a number of rationales that, in the PTO's view, can support a finding of obviousness. *Id.* at 57529-34. The guidelines set forth a number of particular findings of fact that must be made and explained by the Examiner to support a finding of obviousness based on one of those rationales. *See id.*

Furthermore, the M.P.E.P. explicitly states, "If [the] proposed modification would render the prior art invention being modified *unsatisfactory for its intended purpose*, then there is *no suggestion or motivation to make the proposed modification*." M.P.E.P. § 2143.03, citing *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984) (emphasis added); *see also KSR*,

127 S.Ct at 1739 (when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious).

Request for Evidentiary Support

Should any of the above asserted rejections be maintained, Applicant respectfully requests appropriate evidentiary support. Additionally, if the Examiner is relying upon "common knowledge" or "well known" principles to establish the rejection, Applicant requests that a reference be provided in support of this position pursuant to M.P.E.P. § 2144.03. Furthermore, to the extent that the Examiner maintains any rejection based on an "Official Notice" or other information within the Examiner's personal knowledge, Applicant respectfully requests that the Examiner cite a reference as documentary evidence in support of this position or provide an affidavit in accordance with M.P.E.P. § 2144.03 and 37 C.F.R. 1.104(d)(2).

No Waiver

All of Applicant's arguments and amendments are without prejudice or disclaimer. Applicant reserves the right to discuss the distinctions between the applied art and the claims in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the anticipation and obviousness rejections.

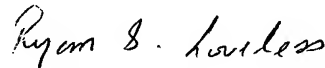
CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Ryan S. Loveless, Attorney for Applicant, at the Examiner's convenience at (214) 953-6913.

Although no fees are believed due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
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